

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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BAUSCH & LOMB INCORPORATED,	:	CIVIL ACTION NO.:
	:	
	:	10-cv-6643 MAT
Plaintiff,	:	
	:	
- against -	:	<b>CONSENT JUDGMENT</b>
	:	
CIBA VISION CORPORATION and	:	
NOVARTIS AG,	:	
	:	
Defendants.	:	
	:	
-----X	:	

WHEREAS, on November 16, 2010, Bausch & Lomb Incorporated (“Bausch & Lomb”) commenced the above captioned action against CIBA VISION Corporation (“CIBA Vision”) and Novartis AG (“Novartis”), alleging claims for false advertising under the Lanham Act, 15 U.S.C. §1125(a), and related state law claims concerning a CIBA Vision print advertisement (the “Advertisement”), a copy of which is attached hereto as Exhibit A;

WHEREAS, the Advertisement contained multiple claims concerning the performance of certain contact lens care solutions against the microorganism *Acanthamoeba*, including Bausch & Lomb’s ReNu® MultiPlus® Multi-Purpose lens care solution (“ReNu MultiPlus”) and CIBA Vision’s Clear Care® product (“Clear Care”);

WHEREAS, included in the claims of the Advertisement, among others, were the following claims:

(a) Clear Care is “the best weapon against *Acanthamoeba*” (the “Best Weapon” claim);

(b) ReNu MultiPlus has “0%” efficacy in protecting against *Acanthamoeba* cysts (the “0% Efficacy Claim”);

WHEREAS, Bausch & Lomb has dismissed its Complaint with respect to Novartis with prejudice; and

WHEREAS Bausch & Lomb and CIBA Vision have entered into a settlement agreement (“Settlement Agreement”) and have consented to the entry of this Consent Judgment, it is hereby

ORDERED, ADJUDGED AND DECREED that:

1. This Court has jurisdiction over the subject matter herein and over the parties who have consented to entry of this Consent Judgment;

2. CIBA Vision and its officers, directors, shareholders, employees, representatives, agents, attorneys, affiliates, subsidiaries, successors, and assigns, and all those in active participation and concert with each of the foregoing, are hereby permanently enjoined from any further distribution and use of:

(a) the Advertisement;

(b) any advertising or marketing claim that “Clear Care is the Best Weapon against *Acanthamoeba*” to the extent such claim is based on the study published in the *Journal of Clinical Microbiology*, titled “Resistance of *Acanthamoeba* Cysts to Disinfection in Multiple Contact Lens Solutions,” by Stephanie P. Johnston, *et al.* (the “Johnston Study”);

(c) any advertising or marketing claim that any Bausch & Lomb product has “0% Efficacy”, and any advertising or marketing claim representing that any Bausch & Lomb

product has “0%” or “no disinfection efficacy” against *Acanthamoeba* cysts to the extent such claims are based on the Johnston Study;

(d) any advertising or marketing claim making comparisons between any CIBA Vision product included in the Advertisement and any Bausch & Lomb product that is based on or references as its support the Johnston Study;

(e) any advertising or marketing claim that any multi-purpose contact lens solution tested in the Johnston Study failed to demonstrate complete disinfection efficacy against *Acanthamoeba* cysts to the extent such claims are based on the Johnston Study;

(f) any graphic depiction of the Johnston Study results comparing the results of Clear Care with those of any competitor.


3. Bausch & Lomb shall have the right to reinstate any claims originally raised in this lawsuit if CIBA Vision fails to comply with terms of this Consent Judgment.

4. This Court shall retain continuing jurisdiction over the parties to the Consent Judgment and over the subject matter of this action for the purpose of interpreting and enforcing the terms of the Settlement Agreement and this Consent Judgment.

5. Bausch & Lomb and CIBA Vision consent to the issuance and entry of this Consent Judgment and waive the right to appeal from or otherwise contest this Consent Judgment, which may be entered in the form and content as set forth above without further notice to any party.

6. Nothing in this Consent Judgment shall relieve either of the parties of any further obligations set forth in the Settlement Agreement.

7. The provisions of this Consent Judgment represent the entirety of the relief awarded to Bausch & Lomb in this action. Each party shall bear its own costs.

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SO ORDERED:

Dated: April 21, 2011

  
Hon. Michael A. Telesca  
U.S. District Court Judge